

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
(SBC Illinois) and CloseCall	:	
America, Inc.	:	
	:	
	:	03-0352
Joint Petition for Approval of	:	
Negotiated Interconnection	:	
Agreement dated April 28, 2003	:	
pursuant to 47 U.S.C. § 252	:	

ORDER

By the Commission:

Procedural History

In this proceeding, Illinois Bell Telephone Company ("SBC Illinois" or "Applicant") and CloseCall America, Inc. ("CloseCall" or "Applicant") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of a negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") dated April 28, 2003, pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq.

A copy of the Agreement was filed with the joint petition. Also attached to the joint petition is a verified statement in support thereof from Kim Nations, "Director-Witness/Negotiations for Southwestern Bell Telephone Company L.P., d/b/a Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection."

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois on July 1, 2003. SBC Illinois and the Commission Staff ("Staff") entered appearances through their respective counsel. The verified statement of Olusanjo Omoniyi of the Commission's Telecommunications Division was admitted into evidence at the hearing. Mr. Omoniyi recommends approval of the Agreement, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

On July 2, 2003, pursuant to leave granted at the hearing, Applicants filed a "joint stipulation to replace appendix" ("Joint Stipulation"). Applicants state that the Joint Stipulation replaces the Appendix on Performance Measurements with a new version of the appendix in order to correct a typographical error in Section 5.5 thereof.

Section 252 of the Telecommunications Act of 1996

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251. Applicants have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Purpose and Terms of the Interconnection Agreement

The Interconnection Agreement between SBC Illinois and CloseCall, dated April 28, 2003, establishes financial and operational terms for the interconnection of Applicants' telecommunications networks and facilities. Among other things, the Agreement contains terms applicable to physical interconnection, access to right-of-way, collocation, transmission and routing of traffic, access to unbundled network elements, number portability, database access, and the purchase of services for resale. The Agreement will remain in effect until July 15, 2004, and will remain in effect thereafter for additional one-year periods absent notice of intent to terminate.

Staff Recommendation

Staff reviewed the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position is that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and SBC Illinois for termination on each other's networks and if it imposes costs on SBC Illinois that are no higher than costs imposed by CloseCall. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252(i) of the 1996 Act allows similarly situated carriers to enter essentially the same contract, the proposed Agreement should not be deemed discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement on the basis of economic efficiency, equity, past Commission orders and state and federal law. Mr. Omoniyi stated that all services in the Agreement are priced at or above their respective long run service incremental cost ("LRSICs"), and thus should be considered economically efficient.

Mr. Omoniyi concluded that approval of the Agreement would be consistent with the public interest.

In his Verified Statement, Mr. Omoniyi also stated that the Performance Remedy Plan in the Agreement is substantially the same as the Remedy Plan approved in Docket No. 03-0098.

Staff's position is that the Agreement should be approved, subject to Staff's recommendations regarding implementation of the Agreement. With respect to implementation, Staff recommended that the Commission require SBC Illinois to modify its tariffs, within five days from the date the Agreement is approved, to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of SBC Illinois' tariffs: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15).

In addition, Staff recommended that the Commission require SBC Illinois to file with the Chief Clerk of the Commission, within five days after the date of this order, a statement verifying that the approved Agreement is the same as the Agreement filed with the joint petition. Staff further recommended that the Commission direct the Chief Clerk to place said Agreement on the Commission's web site under "Interconnection Agreements."

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Agreement does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (4) in order to assure that the implementation of the Agreement is in the public interest, SBC Illinois shall file with the Chief Clerk of the Commission, within five days after the date of this order, a statement verifying that the approved Agreement is the same as the Agreement filed with the joint petition, as revised to include the replacement Appendix attached to the Joint Stipulation filed electronically on July 2, 2003; the Chief Clerk shall place the Agreement filed with the joint petition, as revised to include the replacement Appendix attached to the Joint Stipulation filed July 2, 2003, on the Commission's web site under "Interconnection Agreements";
- (5) within five days of the entry of this Order, SBC Illinois shall modify its tariffs to reference the Agreement in the manner described in the prefatory portion of this Order above;
- (6) the Agreement should be approved as hereinafter set forth;
- (7) approval of this Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the Agreement between SBC Illinois and CloseCall, as modified by the Joint Stipulation filed July 2, 2003, is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that SBC Illinois shall comply with Findings (4) and (5) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 12th day of August, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman